



## POLICE DEPARTMENT

October 28, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Glenn Bysterbusch  
Tax Registry No. 932391  
Police Service Area 8  
Disciplinary Case No. 2012-7502

Police Officer Eunice Vilaseca  
Tax Registry No. 918428  
Police Service Area 8  
Disciplinary Case No. 2012-7503

The above-named members of the Department appeared before the Court on March 11, April 15, May 1, June 10, and June 11, 2013, charged with the following:

### Disciplinary Case No. 2012-7502

1. Police Officer Glenn Bysterbusch, assigned to PSA 8, on or about October 19, 2011, was approximately 1 hour and 10 minutes late for his assigned tour.

P.G. 203-03, Page 1, Paragraph 3 – COMPLIANCE WITH ORDERS

2. Police Officer Glenn Bysterbusch, assigned to PSA 8, while on-duty, on or about November 9, 2011, arrived at his assigned detail approximately 15 minutes late, missing deployment.

P.G. 203-03, Page 1. Paragraph 3 – COMPLIANCE WITH ORDERS

P.G. 206-03, INTERIM ORDER #7, 03-12-10 DISCIPLINARY MATTERS  
Page 1, Paragraph 1

3. Police Officer Glenn Bysterbusch, assigned to PSA 8, while on-duty, on or about November 9, 2011, failed to report to the Desk Officer after returning from his detail and upon entering the stationhouse.

P.G. 202-21, Page 1, Paragraph 4 – DUTIES AND RESPONSIBILITIES

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4. Police Officer Glenn Bysterbusch, while assigned to Headquarters Security, while on-duty, on or about January 21, 2012, was in[]attentive while on post in that said Police Officer was watching a recorded movie and/or program on his cellular telephone.

P.G. 206-03, INTERIM ORDER #7, 03-12-10 DISCIPLINARY MATTERS  
Page 2, Paragraph 24

5. Police Officer Glenn Bysterbusch, assigned to PSA 8, on or about March 29, 2012, failed to safeguard his Department radio resulting in its loss.

P.G. 206-03, INTERIM ORDER #7, 03-12-10 DISCIPLINARY MATTERS  
Page 2, Paragraph 3

6. Police Officer Glenn Bysterbusch, assigned to PSA 8, on or about March 30, 2012, after being instructed by Sergeant Amanda Encke to look for his radio and keep her updated so that notifications could be made if it was lost, failed to comply with said instructions.

[P.G.] 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

7. Police Officer Glenn Bysterbusch, assigned to PSA 8, on or about April 5, 2012, was discourteous to Sergeant Amanda Encke in that, when Sergeant Enck[e] questioned Police Officer Bysterbusch about his delay in notifying her about the loss of his radio, Police Officer Bysterbusch answered her in a raised voice and reprimanding manner.

[P.G.] 203-09, Page 1, Paragraph 2 – GENERAL REGULATIONS

Disciplinary Case No. 2012-7503

1. Police Officer Eunice Vilaseca, assigned to PSA 8, while on-duty, on or about September 11, 2011, failed to be in possession of her tactic[al] response hood while on patrol.

P.G. 204-09, INTERIM ORDER # 26, 07-03-03 – PERSONAL PROTECTIVE EQUIPMENT

2. Police Officer Eunice Vilaseca, assigned to PSA 8, while on-duty, on or about September 23, 2011, failed to voucher a vehicle for safekeeping in a timely manner.

P.G. 218-12 – SAFEGUARDING VEHICLES IN POLICE CUSTODY

3. Police Officer Eunice Vilaseca, assigned to PSA 8, while on-duty, on or about November 9, 2011, arrived at her assigned detail approximately 15 minutes late, missing deployment. (*As amended*)

P.G. 203-03, Page 1, Paragraph 3 – COMPLIANCE WITH ORDERS

P.G. 206-03, INTERIM ORDER #7, 03-12-10 – DISCIPLINARY MATTERS

Page 1, Paragraph 1

4. Police Officer Eunice Vilaseca, assigned to PSA 8, while on-duty, on or about November 9, 2011, failed to report to the Desk Officer after returning from her detail and upon entering the stationhouse.

P.G. 202-21, Page 1, Paragraph 4 – DUTIES AND RESPONSIBILITIES

5. Police Officer Eunice Vilaseca, assigned to PSA 8, while on-duty, on or about July 27, 2011, failed to properly fill out a summons she issued in that she did not specify a return date.

P.G. 209-04 SUMMONS RETURN DATE AND TIME

6. Police Officer Eunice Vilaseca, assigned to PSA 8, while on-duty, on or about December 10, 2011, was discourteous to Sergeant Brian Query in that Police Officer Vilaseca raised her voice at said Sergeant, making her dissatisfaction with an assignment known in front of other members of the service, and challenged said Sergeant's authority.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office.

Respondent Bysterbusch was represented by John Tynan, Esq., Worth, Longworth & London LLP. Respondent Vilaseca was represented by Eric Sanders, Esq., The Sanders Firm PC.

Respondent Bysterbusch, through his counsel, pleaded Not Guilty to Specification Nos. 1-3 and 5-7. He pleaded Guilty to Specification No. 4 and testified in mitigation of the penalty. Respondent Vilaseca pleaded Not Guilty to the subject charges. A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent Bysterbusch is found Guilty of Specification Nos. 1 and 5, and Not Guilty of Specification Nos. 2, 3, 6 and 7. Having pleaded Guilty to Specification No. 4, he is found Guilty. Respondent Vilaseca is found Guilty of Specification Nos. 1, 2, 5 and 6, and Not Guilty of Specification Nos. 3 and 4.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Rosemary Davis, Sergeant Michael Torpey, Sergeant David Egan, Sergeant Brian Query, Lieutenant Kristen McKee and Sergeant Amanda Encke as witnesses.

Sergeant Rosemary Davis

Davis was a sergeant in Police Service Area 8 (PSA 8) and was familiar with Respondents. On September 11, 2011, Davis was the patrol supervisor and conducted inspections at roll call. Respondent Vilaseca did not have her tactical response hood, or escape hood, which was required equipment. When confronted, Respondent Vilaseca did not say anything. Davis informed her that she was going to receive a command discipline (CD).

On December 10, 2011, Davis was preparing a prisoner transport in the desk area and saw Respondent Vilaseca approach the desk. Davis testified that Sergeant Brian Query and Respondent "got into a what I would say not an argument they were just going back and forth in regards to a transport, which got very loud and very disrespectful." The confrontation occurred because Respondent Vilaseca was granted lost time toward the end of her tour but was concerned that the transport would interfere with the lost time. Respondent "basically" told Query that she refused to do the transport. Davis confronted Respondent Vilaseca and took her aside.

On cross examination, Davis did not recall whether Respondent Vilaseca was qualified for Chemical, Ordnance, Biological and Radiological Awareness (COBRA) on September 11, 2011. Davis testified that officers assigned to a hospital post were required to carry their

COBRA equipment. Davis had seen PSA 8 officers assigned to hospital posts carrying COBRA equipment.

On December 10, 2011, Davis assigned Respondent Vilaseca the prisoner transport during roll call. Davis was sure that Respondent Vilaseca was at the desk during the confrontation with Query. Respondent Vilaseca did not handcuff the prisoner; Respondent Bysterbusch was inside the cell with him or her.

On re-direct examination, Davis testified that she did not recall having any conversations with Lieutenant Dennis Azambuja prior to issuing the September 2011 CD.

On re-cross examination, Davis admitted that never before had she issued a CD in PSA 8 for not having an escape hood.

Upon questioning by the Court, Davis testified that the transport confrontation occurred slightly after 1100 hours. Respondent Vilaseca likely was doing a day tour and requested three hours of lost time.

On continued re cross examination, Davis indicated that Respondent Vilaseca performed the prisoner transport. She requested the assignment during roll call because she had requested the lost time and did not want to get stuck with anything else. Davis did not recall if Azambuja was working that day. She denied that he told her to change Respondent Vilaseca's post.

Sergeant Michael Torpey

Torpey had been the training sergeant at PSA 8 since 2008. One of his responsibilities involved reviewing summonses that were either voided or returned from court because they were prepared incorrectly. Torpey's job was to review the summons, find the error, record it, and instruct the officer.

Torpey testified that in 2011, Respondent Vilaseca prepared a summons improperly. There was no return date, so the summons would not be processed. This summons was voided. Torpey spoke to Respondent Vilaseca and issued her a minor violation. Torpey did not have any conversations with any other supervisors regarding this summons.

It came to Torpey's attention that Respondent Vilaseca did not have her COBRA equipment prior to going on patrol. Torpey stated that the Millennium mask was part of the COBRA equipment. It essentially was a gas mask and allowed breathing in a compromised environment. It was different from the tactical response hood, which was issued to all officers regardless of COBRA training and normally was kept strapped to the thigh. It allowed an officer to flee the area in the event of a catastrophe. In other words, the Millennium mask allowed sustained breathing while the tactical response hood allowed escape (i.e., an escape hood).

On cross examination, Torpey admitted that Azambuja, the platoon commander, brought it to his attention that Respondent Vilaseca was not in possession of the Millennium mask. Azambuja told him that Respondent Vilaseca was COBRA-trained. Torpey called the COBRA training facility and confirmed that she was trained. When Torpey asked Respondent Vilaseca about it, she said that she received one-day training. COBRA certification entailed two-day training. Torpey did not recall if Respondent Vilaseca told him that she was out sick when this training was supposed to take place.

Torpey indicated that the summons in question was written by Respondent Vilaseca on February 4, 2011. The deficiency could have come to Torpey's attention months after it was written. Around July 27, 2011, Torpey spoke to Respondent Vilaseca about voiding the summons. Torpey conceded that not all officers received a minor violation when the return date on a summons was missing. When asked why a minor violation was given in this case, Torpey

said, "If well, it's completely blank, so it was an omission, but if the return date if they have a return date down and they may have been given an incorrect return date from the patrol supervisor at roll call, so if I can't determine that, I'm not going to give them a minor violation."

Sergeant David Egan

Egan was the patrol supervisor on September 23, 2011. That day, Respondent Vilaseca made two burglary arrests. Construction items were found in the back of a vehicle and the vehicle was seized. As the arresting officer, Respondent Vilaseca was responsible for vouchering the property.

Respondent Vilaseca's tour ended at 1540 hours and Egan's tour ended at 1552. Around 1552, Egan spoke to Respondent Vilaseca and instructed her to be guided by what the assistant district attorney (ADA) instructed her as to whether or not the vehicle should be voucherized as arrest evidence. Later, Respondent Vilaseca told Egan that the ADA advised her not to so voucher. According to Egan, that meant the vehicle should have been voucherized for safekeeping. A record should have been made of the vehicle's condition and an inventory search should have been performed.

Egan testified that Respondent Vilaseca never gave him the keys. He saw the vehicle on the grounds of PSA 8. The desk officer for the incoming platoon was Sergeant Amanda Encke.

On cross examination, Egan denied seeing a practice at PSA 8 where vehicles that were neither kept as arrest evidence nor voucherized for safekeeping were parked on the grounds of the command.

Egan testified that the keys for the vehicle were located near the desk. He admitted that "[s]ometimes" the desk officer would "keep things or maintain equipment." The keys were there

for two to three days. A couple of days after the arrest, Egan found out that the vehicle was not vouchered in accordance with policy. Someone came in inquiring about the vehicle.

On September 30, 2011, Egan issued a CD to Respondent Vilaseca for failure to voucher the vehicle in a timely manner. He denied that Azambuja instructed him to issue it. They spoke that day but Azambuja was not involved with the CD.

On re-direct examination, Egan said that after someone came to claim the vehicle and it turned out to have been unvouchedered, he directed Respondent Vilaseca to voucher it.

Sergeant Brian Query

Query was promoted to sergeant and transferred to PSA 8 in September 2011. On October 19, 2011, Respondent Bysterbusch arrived 1 hour and 10 minutes late. As he passed the desk, Query confronted him. Respondent Bysterbusch offered no excuse but a UF-28 Leave of Absence Report was put in. Query did not know who insisted upon or submitted the '28.'

Query asserted that usually in such cases, a CD would be issued. Instead, Query placed Respondent Bysterbusch in the minor violations log.

On November 9, 2011, Query was the desk officer. Respondent Bysterbusch arrived 15 minutes late to the critical response vehicle (CRV) detail to which he was assigned in Manhattan with Respondent Vilaseca. CRV details were counterterrorism assignments in which marked vehicles were placed in strategic locations as deterrents. Query spoke to Sergeant Steven Caro, the supervisor in charge of the CRV detail (Caro had retired from the Department by the time of trial). Caro was "extremely upset." He told Query that the officers were rude and discourteous to him. Caro asked the officers where they were and they said that they were already there.

They asked Caro where *he* was. Respondent Bysterbusch told Query that there was an issue with their vehicle.

Respondents entered the PSA 8 station house after the CRV detail. Later, they were summoned to the desk before the end of tour at approximately 1535 hours to be handed some notifications. However, they were not in the building. Azambuja called for them over the public address (PA) system and officers looked for them in each locker room.

Query testified that the procedure for officers sent to CRV details was that they were to return to the command when finished, even if their end of tour occurred while they were on the detail. Further, it was not permissible to just leave the station house before the rest of their tour was over. They had to return the radio motor patrol vehicle (RMP) and await further assignment by the desk officer. Neither Respondent appeared before Query. He never learned where they were.

The next day, Query talked with Respondent Bysterbusch, who told him that he left early on November 9, 2011. Respondent Bysterbusch claimed that everyone left early when returning from a CRV detail.

On December 10, 2011, Query was the desk officer. Before roll call, Respondent Vilaseca advised Query that she had lost time previously approved by another supervisor. She would be leaving at approximately 1300 hours. To oblige, Query assigned her to a prisoner transport. The vehicle to be used was in PSA 8's satellite command, located within the confines of the 47 Precinct, but Respondent Vilaseca called Query to inform him that it had no gas. Query advised her to go down the block to the 47 Precinct station house and fill up there.

A couple of hours later, Respondent Vilaseca returned to PSA 8. Query told her that she still needed to do the prisoner transport, and when she finished, it would be up to Query and "the

other supervisor" whether she could leave. Respondent Vilaseca "became extremely upset." Respondent Vilaseca referenced Query's time in the command and told him he "just got here." She told Query that she would leave central booking at whatever time her lost time was approved. Her tone was loud and boisterous and she included profanity. He told her, also in a raised voice, that she was to follow his order.

On cross examination, Query stated that he worked in the 40 Precinct before PSA 8. Azambuja, then a sergeant, was Query's supervisor in the 40 Precinct. Azambuja was transferred to PSA 8 when he was promoted to lieutenant and later became Query's supervisor at PSA 8.

Prior to October 19, 2011, Azambuja talked to Query about the conduct of both Respondents. Azambuja said some negative things about Respondent Bysterbusch. Query was Respondent Bysterbusch's squad supervisor for the six weeks that Query had been working in PSA 8. He did not recall any problems or negative personal dealings with Respondent Bysterbusch.

Query believed that his tour on October 19, 2011, began at 0652 hours. He arrived at 0645 hours. He spoke to the desk officer from the prior tour, asking if anything carried over into the next tour. That sergeant did not mention anyone calling to say he was running late.

Respondent Bysterbusch was not at roll call at 0705 hours on October 19, 2011. Department policy would have been to determine his whereabouts. Query did not know what actions were taken, if any.

Query did not recall if Respondent Bysterbusch said that he called ahead when he arrived at PSA 8. He did not explain why he was late.

Query stated that for the November 2011 CRV detail, Respondents received their RMP around 0530 hours. He did not know the exact time or where they got the car from. When Caro called Query, Caro did not mention Azambuja.

Query agreed that there normally was a lot of traffic from Manhattan to the Bronx during the time of day Respondents would have returned from the CRV detail. PSA 8 was located in Throgs Neck in the Bronx. At the end of the detail, the keys to Respondents' RMP were not handed back to Query. Query's tour ended at 1557 hours, after Respondent Bystebusch's tour ended. Query did not make any effort to see if the keys were present in the station house. He did not know if the RMP was being used in the next tour. Respondents were missing so a search was conducted to look for them as well as any equipment, such as keys. During the search for Respondents, other officers told Query that they saw them come in through the rear doors. Query did not know what time Respondents actually returned to PSA 8. He did not tell the next tour "supervisor" that two officers were missing even though he knew that was the correct procedure.

Respondent Vilaseca did the December 2011 prisoner transport with Respondent Bystebusch. When she returned from the satellite command, she told Query that there was an issue refueling the vehicle. Respondent Vilaseca had to go from the parent command to the satellite about two miles away, then to the 47 Precinct, and then back to PSA 8. It was a little less than six miles all told.

After Respondent Vilaseca yelled at Query, Davis spoke to her about it. Davis was trying to calm the situation down. She told Query to let Respondent Vilaseca continue the transport and depending on when she returned, she might be able to take lost time.

On re-direct examination, Query stated that if Respondent Bysterbusch had called ahead on October 19, 2011, and spoken to a supervisor, Query probably would not have entered him in the minor violations log.

On re-cross examination, Query conceded that between 1500 and 1540 hours, the desk was very busy because it was the change of platoons. It was possible that personnel could walk by the desk unnoticed.

Lieutenant Kristen McKee

McKee was the integrity control officer (ICO) at PSA 8. She testified that over the course of several months, perhaps a year, Respondents received numerous CDs.

McKee spoke to Caro concerning the CRV detail. He told her that Respondents were late to the detail. Typically, officers on these details were instructed to report for duty at their home command at 0530 hours, and then go to the detail. Respondents reported to PSA 8 that morning.

Caro said that the CRV officers deployed for their assignments at 0700 hours, without Respondents. Caro called PSA 8 to inquire of Respondents' whereabouts (see Department's Exhibit [DX] 1, PSA 8 telephone message log, indicating that Caro called at 0700 to say that Respondents were not present and were deemed tardy). Caro estimated that Respondents arrived between 0715 and 0720.

Caro told McKee that he was in the temporary headquarters vehicle (THV) when Respondents arrived. Respondent Bysterbusch entered the vehicle to obtain a radiation pager. Caro asked him why he was late. Caro told McKee that Respondent Bysterbusch gave him "disrespectful facial expressions, rolling his eyes" and said that he encountered traffic.

Later, Caro left the THV and spoke to Respondent Vilaseca. She stated that she and Respondent Bysterbusch were late because they did not get their RMP right away.

McKee testified that Respondents were given CDs as a result of the incident.

On cross-examination, McKee did not remember the desk officer that assigned Respondents the RMP saying anything about a delay or confusion surrounding the keys.

McKee indicated that E-ZPass records showed Respondents crossed into Manhattan via the Robert F. Kennedy (Triborough) Bridge around 0640 hours. They had to go far downtown to meet up with the rest of the CRV team. McKee agreed that typically it would not take that long to get from PSA 8 to the bridge.

While investigating, McKee knew that Respondent Vilaseca made a complaint against Azambuja for sexual harassment and racial discrimination. McKee also knew that Respondent Bysterbusch made allegations against Azambuja. Respondent Vilaseca complained to McKee that Azambuja was trying to impede her ability to give testimony to the Office of Equal Employment Opportunity (OEOO). Respondent Vilaseca also told McKee that she was being retaliated against. McKee did not know if Azambuja spoke to Caro on November 9, 2011.

McKee was in charge of this investigation from beginning to end. On July 29, 2012, Captain Kevin Maloney, the commanding officer, suggested that Respondents should be issued charges. When asked if she thought it was possible that these CDs were entered for the sole purpose of retaliation, McKee said, "Anything is possible, of course, but I am not an EEO investigator. . . . I wasn't going to go down that road."

McKee scheduled Respondent Bysterbusch for something with OEOO. Respondent Bysterbusch never complained to McKee that he was being retaliated against by Azambuja.

No supervisors came to McKee after October 3, 2011 (the date of Respondent Bysterbusch's OEEO notification), to tell her to watch Respondent Bysterbusch.

McKee agreed that Respondents received the most CDs in 2011 out of all police officers assigned to the command. Most involved issues of disrespect, although Respondent Bysterbusch never was disrespectful to McKee and she never saw him act disrespectfully toward others.

Sergeant Amanda Encke

Encke had been a member of the Department for seven and a half years. She was promoted to sergeant and transferred to PSA 8 in August 2011.

On September 23, 2011, Encke was the desk officer. If an officer was vouchering a vehicle for safekeeping, Encke had to review the invoice, sign it, and secure the invoice with the keys behind the desk. Respondent Vilaseca was processing an arrest that day. Encke did not know that a vehicle was involved. Encke did not speak to Respondent Vilaseca about handling a seized vehicle or take keys from her. If Respondent Vilaseca told Encke that she had a vehicle in custody, Encke would have told her to voucher it. Sometime after September 23, 2011, Encke learned that the vehicle was not vouchedered.

Encke was Respondent Bysterbusch's squad supervisor. They both worked on March 29, 2012. Encke was the desk officer. On March 30, 2012, toward the beginning of the tour, Respondent Bysterbusch asked Encke if she had seen the top piece of his radio, the transmitter piece. Transmitters normally were assigned to an individual officer. Respondent Bysterbusch said that he placed it behind the desk the previous day, but placed the battery in its proper location. Encke advised him to look in locations like the crime analysis or ICO's office. Encke

told him, however, that if he did not find it, he had to inform her so that she could make the necessary notifications to the Internal Affairs Bureau (IAB).

Later in that same tour, Encke saw Respondent Bysterbusch going out to resume patrol. He had a radio with him so Encke assumed that he had found his.

During a tour change on April 5, 2012, while Encke's supervisors were near the desk, Respondent Bysterbusch approached her and said something to the effect of, "[H]ey, Sarge, can we take care of the radio today, it's been five days." Encke, thinking he already had found it, asked him what he was talking about. Respondent Bysterbusch replied, in a much louder, confrontational and disrespectful voice, "I told you and you did nothing about it."

Encke told Respondent that he was not going to speak to her like that. She completed scanning summonses and then stepped outside because she was really upset. Azambuja accompanied her. Azambuja asked if she needed help with anything. Encke declined.

Encke denied that Azambuja influenced how she was going to discipline Respondent Bysterbusch. Initially, Encke was unsure whether or not she was going to issue a minor violation or a CD. She spoke to Respondent Bysterbusch outside and told him, "I do not appreciate being spoken to like that in that tone of voice where you are raising your voice to me. When I'm in uniform, I am your boss and I don't appreciate that." In response, Respondent Bysterbusch said that he did not feel he behaved inappropriately. At that point, she told him that she was going to issue him a CD.

On cross examination, Encke said that she did not know if, on September 23, 2011, there was a set of keys placed in an envelope behind the desk. She did not know if the owner of the vehicle ever picked up the vehicle.

The first time that Encke heard about the matter was “[m]uch later after the incident.” She did not have a conversation with Azambuja about it. Around that time, however, Encke heard rumors that Respondent Vilaseca had made allegations of discrimination against Azambuja. It was neither Davis nor Egan that told her. She was not that friendly with Davis. It was Query that told her.

Encke agreed that if property was lost in the command, as the desk officer, it was her responsibility to make timely notifications and file a complaint report. She did not do these things on March 30, 2012, for Respondent Bysterbusch’s transmitter. Encke did not receive a CD for her failure to note these losses, nor was she placed in the minor violations log.

Respondent Bysterbusch did not tell Encke that he could borrow a transmitter. She saw him resume patrol within an hour with a transmitter. She did not ask where he got it because her directive to him was to come back and tell her what his search revealed.

During the confrontation with Respondent Bysterbusch on April 5, 2012, other supervisors near the desk did not say anything to Respondent Bysterbusch but came to Encke’s aid. After Encke spoke to Respondent Bysterbusch, she spoke to the ICO.

#### Respondents’ Case

Respondents called Captain Kevin Maloney, Lieutenant Dennis Azambuja, Gabriel Cruz, Police Officer Elizabeth Natale, and Lieutenant Ralph Johnson. Respondents also both testified on their own behalf.

Captain Kevin Maloney

Maloney, who was white, was the commanding officer of PSA 8. He was aware that Respondent Vilaseca received a number of disciplinary actions filed by supervisors. In fact, within a short period of time, Respondents received several CDs, so he was concerned. Because of the number of CDs given to Respondent Vilaseca and the different supervisors from various commands that issued them, the Housing Bureau Investigations Unit conducted the investigation and the CDs were not adjudicated at the command level.

Maloney testified that when officers were assigned to a hospitalized prisoner, they were supposed to have all the required equipment on their gun belt that they would have when assigned to a sector or foot post. He was not aware whether officers on hospital posts always carried the hood. Maloney spoke to Azambuja about this CD in the course of reviewing CDs that were being issued on the lieutenant's tour.

Maloney stated that when the Department took custody of a vehicle, it was Department policy to voucher it. He did not know of a custom in PSA 8 where sometimes vehicles in custody for safekeeping were not vouchered but turned back over to the owner.

Maloney did not recall speaking to Azambuja about the CRV detail matter.

Maloney changed Respondents' tour after the incident involving the prisoner transport because of their conduct that day. It was not retaliatory.

In 2011, Respondent Vilaseca complained to Maloney about Azambuja. She was upset about a comment that Azambuja made during roll call that she felt was directed at her. Azambuja referenced the fact that her hair was touching her collar and told her that she "had to put her Spanish hair off her collar." Maloney told Respondent Vilaseca that he would notify OEEO. He did so as soon as Respondent Vilaseca left his office.

Maloney maintained that it was “[a]bsolutely not” the case that Respondent Vilaseca came to Maloney a number of times to complain about retaliation and unfavorable assignments. He admitted, however, that they had “one other conversation since then that involved Officer Bysterbusch subsequent to our first conversation.” Respondent Vilaseca never told Maloney that she felt she was being retaliated against.

When asked if he spoke to Azambuja about EEO matters, Maloney testified, “There was a prior OEEO issue that came up unrelated to this incident. Part of the letter of instruction that came out of that case was that we had a supervisor meeting, and . . . I addressed to all supervisors – nobody specific – the Department’s policy regarding OEEO.” Maloney did not recall when this meeting occurred.

Maloney spoke to Azambuja about Respondent Vilaseca’s disciplinary problems. He stated that he did not recall if he discussed that with Davis, but then indicated that he spoke about it with both Davis and Query.

Maloney never thought that these minor violations were being issued in retaliation for Respondent Vilaseca’s complaint against Azambuja because many officers received minor violations. Respondent Vilaseca “was very vocal and was having problems with several supervisors at this command that was brought to my attention.” For example, Respondent Vilaseca went into the administrative office to try to change her assignments on her own volition. Maloney instructed her to speak to her direct supervisor. Maloney did not believe he spoke to the commanding officer of Housing Borough Bronx/Queens (HBBQ) regarding the discrimination allegations.

Maloney explained that squad supervisors evaluated the members of their squad on performance and discipline. The squad supervisor would speak to the officers’ previous

supervisors and platoon commanders. The commanding officer did not review all evaluations, but did so on members who received a 2.5 rating or below. It concerned Maloney when an evaluation dropped from a 4 to a 2.

On cross examination, Maloney stated that safeguarding a prisoner was considered a patrol function in that it was given out at roll call, but was not necessarily a patrol assignment.

Maloney said that he did not recall speaking to Respondent Bysterbusch on October 4, 2011, concerning Respondent Bysterbusch being questioned at OEEO. Respondent Bysterbusch did not tell Maloney that Azambuja directed Respondent Bysterbusch not to go to OEEO to testify as a witness in Respondent Vilaseca's complaint. Maloney admitted, however, that there was an issue concerning an OEEO notification for Respondent Bysterbusch that came through the ICO's office. The notification was for Respondent Vilaseca's allegation. The ICO told Respondent Bysterbusch to get a new identification card because his was close to expiration (this was a ruse to allow him to go to OEEO at Police Headquarters [HQ] without anyone knowing the true reason). Azambuja was the platoon commander, and Respondent Bysterbusch informed him of the notification. "The platoon was busy." Azambuja directed Respondent Bysterbusch to present his ID card. The lieutenant "realized that the ID card was not expired" and refused to let Respondent Bysterbusch go.

Maloney was not aware if the discrimination allegations were known throughout the command. Respondent Bysterbusch was one of the officers that appealed his evaluation.

Maloney agreed that at least one other sergeant and a lieutenant who did not testify at trial gave at least one of the Respondents a minor violation or CD.

On re-direct examination, Maloney testified that he re-assigned Azambuja to the second platoon from the first platoon after the day tour platoon commander was transferred. He thought

that Azambuja would benefit from being on the second platoon but denied that it was so that Maloney could more closely monitor him. Maloney assigned Lieutenant Ralph Johnson to the first platoon.

Lieutenant Dennis Azambuja

Before working in PSA 8, Azambuja was assigned to the 40 Precinct for two years. During this time, he received EEO complaints against him by male and female members. He never received any disciplinary action relative to an investigation.

Azambuja admitted that he was the subject of the ticket-fixing scandal in 2008 or 2009. He received a CD as penalty.

At PSA 8, Azambuja was the ICO for about one year. "It wasn't for me," though, so in 2009 he became the midnight platoon commander. He denied that he was "asked to leave" the ICO position. Subsequently, Maloney moved him to day tour platoon commander. Azambuja did not know why. Azambuja was not aware of any complaints made against him while he was midnight platoon commander.

Azambuja first met Respondent Vilaseca while he was the ICO. Respondent Vilaseca was working day tours and he mainly worked the other two platoons. Their relationship was fine, and he never had to give her a CD, but they did not have much interaction.

As day tour platoon commander, his subordinates were Davis and two other sergeants. His relationship with Davis was fine. He never made any racial jokes around her. When asked if he ever referenced bananas and monkeys, he stated, "The one I think you are referring to is in the morning, I like to have a banana with my yogurt." He never said anything about monkeys. He

denied making any comments about women in the workplace in front of Respondent Vilaseca. He never brushed up against her and snatched papers out of her hands.

Once Azambuja was moved to the day tour, he observed Respondent Vilaseca and found that she “didn’t generally like to listen to the rules in terms of uniform appearance, being on time. . . . Minor things.” At some point, Azambuja found that Respondent Vilaseca “had a hard time taking direction.” She was “very condescending” and “very skittish.”

Azambuja conceded that officers assigned to hospital posts were not required to bring all their equipment, such as a helmet and escape hood, to the hospital. Azambuja had Davis issue Respondent Vilaseca the CD in question, however, because she was required to have her escape hood at roll call, as she did not know her assignment yet. Azambuja decided on the CD instead of an instruction because of the heightened alert surrounding the 9/11 attacks anniversary. Azambuja asked Torpey to find out whether Respondent Vilaseca was COBRA-qualified. Azambuja asserted that the Housing Bureau supervisor of patrol wanted it determined what officers were qualified.

Azambuja denied that it was the “policy of supervisors” at PSA 8 that when a vehicle was taken into custody for safekeeping, the officer could give the keys back to a responsible adult without vouchering the vehicle. That never happened; a property invoice had to be prepared.

During every tour, the desk officer was supposed to take inventory of everything in police custody.

Egan came to Azambuja before issuing the CD. Azambuja did not know how long the vehicle in question was parked but was informed that it was quite a while. Azambuja believed that Respondent Vilaseca “was told several times to do it and it wasn’t done, so I think that had something to do with it.”

Azambuja was working a day tour on October 3, 2011. Respondent Bysterbusch received a notification that day from McKee to appear at HQ to replace his expired ID card. Azambuja spoke to Respondent Bysterbusch about the notification and asked McKee why Respondent Bysterbusch had to appear at that specific time.

Maloney did not tell Azambuja that he was the subject of an EEO complaint filed by Respondent Vilaseca. Azambuja never saw any notifications from members of PSA 8 that showed Respondent Vilaseca was going to OEEO.

Azambuja did not recall Respondent Bysterbusch calling ahead on October 19, 2011, saying he would be late.

Azambuja only changed Respondent Vilaseca's assignment once. She had to voucher some items but was not finished. She was taken off her next assignment, which was to transport the courier, so that she could finish voucherizing. Azambuja never called the station house while he was in the field to change her assignment.

Azambuja testified that it was very rare for a car not to be available to officers who were about to go on a CRV detail. Azambuja did not know Caro and never spoke to him.

Azambuja saw Respondent Bysterbusch return to the station house on the date in question. At about 1400 hours, an hour and a half until the end of tour, Respondent Bysterbusch walked from the front door, past the desk and down to the locker room. Azambuja testified, "I called him and he kept walking." Additionally, Torpey indicated to Azambuja that Respondent Vilaseca was present. Azambuja wanted Respondent Bysterbusch to go to HBBQ to pick up some paperwork and had to give Respondent Vilaseca a notification. Azambuja had Respondents paged on the PA.

Azambuja never got in contact with Respondent Vilaseca so he asked a female member to look for her in the female locker room. Azambuja sent Query to look for their RMP. Query reported that Respondents had already left. Azambuja knew Query from the 40 Precinct. They did not socialize outside of work.

Azambuja became aware of Respondent Vilaseca's EEO complaint in October or November of 2011.

McKee never told Azambuja that she was issuing a CD on November 11, 2011, to Respondent Vilaseca for committing four minor violations. Azambuja never saw this CD. McKee never told Azambuja that Respondent Vilaseca filled out a summons improperly or was out of uniform. Azambuja recalled, however, an instance where Respondent Vilaseca was not wearing her ballistic vest at roll call.

It was likely that Azambuja spoke to Query about Respondent Vilaseca's alleged courtesy on December 10, 2011. Query "has his work cut out when working with these two officers."

Azambuja was next to Encke when Respondent Bysterbusch and Encke first started to discuss Respondent Bysterbusch's radio on April 5, 2012. Azambuja went outside with Encke. Encke told him what had transpired. He did not tell her that she should issue a CD. He told her to talk to the assistant ICO for guidance.

Respondent Bysterbusch challenged the evaluation he received for 2011. Azambuja did not conduct that evaluation but he did review it. Azambuja stated that it was untrue that prior to serving as a witness in the EEO complaint, Respondent Bysterbusch received no CDs. He said that Respondent Bysterbusch's evaluation the previous year, when he received a 3.5, was done by a different sergeant who "did all the work" for Respondent Bysterbusch.

On cross examination, Azambuja stated that a hospital post was a patrol function.

Respondent Vilaseca's CD for insufficient memo book entries was issued by Caro.

At the time that Respondent Bysterbusch was given a notification to go to One Police Plaza, Azambuja was not aware of any EEO allegations.

Azambuja issued Respondent Bysterbusch several minor violations. One was for failure to follow the instructions of a supervisor and another was for failure to retrieve his firearm prior to conducting a prisoner transport. A third was for failure to clean the command properly after being directed to do so.

Police Officer Gabriel Cruz

Cruz had been assigned to PSA 8 since 2004. He testified that it was a common practice, when taking a vehicle into custody for safekeeping, to keep the keys behind the desk, park the vehicle, and then give it back to its owner without vouchering it.

Cruz heard a rumor that Respondent Vilaseca made allegations of discrimination against Azambuja. It was common knowledge among the officers. There was tension between Respondent Vilaseca and Azambuja.

Cruz recalled that Respondents' assignments were changed a lot. Supervisors made these changes but Cruz did not know who specifically.

Respondent Bysterbusch also complained to Cruz about being treated unfairly by supervisors. Respondent Bysterbusch said that Azambuja was giving him the most problems.

Cruz never had problems with Respondent Bysterbusch's ability to work as a police officer.

On cross examination, Cruz admitted that Egan was a good supervisor. Cruz was satisfied with his evaluations conducted by Egan.

Cruz stated that if a vehicle were kept for three days, it should be vouchered for safekeeping.

Cruz agreed that he had been partnered with both Respondents at times.

Police Officer Elizabeth Natale

Natale had been the assistant ICO at PSA 8 from 2006, since before she was placed on restricted duty, having requested the position. She worked with Azambuja for about one year while he was the ICO. He was “[d]ifficult to work for” and “didn’t really want a police officer in the office, so he would tell me everyday he wanted me out.” Azambuja was “going through some family issues.” He said that he did not like women and did not want Natale in the office. She complained to the commanding officer (prior to Maloney), who said that he would speak to Azambuja.

Natale stated that officers would complain about Azambuja at the ICO’s office, saying he was difficult to work for. Natale did not, however, know of any complaints filed by minority officers claiming that Azambuja discriminated against them.

McKee told Natale that Respondent Vilaseca made complaints to her about discrimination. At some point after that, possibly after the notification from OEEO for Respondent Vilaseca to report, Natale saw an increase in the number of CDs that Respondent Vilaseca received.

Natale testified that a notification was given to Respondent Bystebusch on October 3, 2011, purportedly to get an ID card. OEEO notifications came through the ICO’s office.

Azambuja, no longer the ICO, questioned Respondent Bysterbusch as to why he was going to One Police Plaza that day and asked Natale to call McKee, the ICO at the time, for information. He did not seem to believe that Respondent Bysterbusch was actually headed to the Identification Card Unit (IDCU).

One of Natale's duties was to maintain the CD log. Before October 3, 2011, Respondent Bysterbusch's name had been mentioned rarely in the ICO's office. After that date, however, he was issued "quite a few" CDs.

Natale did not know if Azambuja ever entered the ICO's office once he became the second platoon commander. She was told by other officers that he did so, with a set of keys, while the new ICO was not there. Personnel were not supposed to enter the office while the ICO was unavailable.

Natale stated that it was general practice for officers assigned to a hospital post not to carry all of their equipment because it was not patrol. It was a fixed post.

On cross examination, Natale said that when she worked with Azambuja, he used profanity and spoke rudely, including to her and "the sergeant." Azambuja would comment on Natale's restricted duty status and tell her she was useless. He said that he hated all women. Natale never contacted OEEO or IAB.

Natale knew Respondent Vilaseca for most of her career, and she "never saw her get that many CDs before." She alerted McKee about the increase.

Natale found it odd that after Respondent Bysterbusch received the OEEO notification, he started to receive many CDs. She admitted, however, that she did not notify OEEO, IAB or McKee.

Natale had seen the CDs given to Respondents and thought that some of the allegations were fabricated. She never observed either officer to be discourteous.

When defective summonses were returned to the command, they were sent to the ICO's office and then to the training officer. The summonsing officer was given a minor violation.

Natale agreed that it was possible for an officer who was assigned to a fixed post to be post-changed to patrol.

On re-direct examination, Natale stated she did not inform IAB or OEEO about the alleged misconduct of Respondents because she did not want to be retaliated against or “[l]abeled a rat.”

Upon examination by the Court, Natale stated that Azambuja no longer was assigned to PSA 8.

Lieutenant Ralph Johnson

Johnson, who was African American, currently was assigned to the 26 Precinct. Previously he was assigned to PSA 8 and was transferred there in May 2011, shortly after being promoted to lieutenant. He requested the transfer because it was closer to his residence. When he arrived, Maloney stated that although the day tour platoon commander position was open, he was going to place Azambuja there. Johnson alleged that Maloney told him “he wanted to sock it to him” his words verbatim. He told me that he knows he’s paying child support, so he wants to move him to really hurt his pockets.” Azambuja would be paid less working during the day. Additionally, Maloney said that he did not trust Azambuja. He did not explain why but said that other officers were complaining about him.

Johnson was assigned to the midnight platoon. He testified that from his first day at PSA 8, he and Maloney did not see eye-to-eye. "He made me feel very unwanted." Johnson said as time went by, he started receiving nasty memoranda from Maloney, saying, "[W]hat are you doing with your platoon, were you ever a real supervisor, that sort of thing." About every week, Maloney condescendingly discussed Johnson's platoon's deficiencies with him. Johnson did not see Maloney doing this with other supervisors. Maloney issued four CDs to Johnson and as a result, Johnson received charges and specifications (see Case No. 2012 7153, pending). Maloney recommended that Johnson's probationary status be extended.

Johnson felt uncomfortable and like he was being followed. Johnson believed that part of this was due to his race, although he admitted that the two other African American male supervisors at PSA 8 were treated fairly. Johnson did not contact OEO or HBBQ because he was afraid of retaliation and of being demoted to sergeant.

Johnson would interact with Azambuja during change of tours. Azambuja would mention "officers who to be careful with. . . . officers that were lazy, didn't want to do anything . . just job-related stuff. It wasn't really nothing out of the ordinary."

Immediately after Respondent Vilaseca was assigned to the tour, Azambuja told Johnson "to keep a sharp eye on" Respondent Vilaseca. Yet she appeared to Johnson "to be a normal officer, came to work, did an everyday job, had no complaints with her. She would do everything I told her to. She responded in a positive way." The patrol supervisors did not relay to Johnson any complaints about her. Respondent Vilaseca worked the midnight tour for a few months while Johnson was there.

In February 2012, Johnson began working the third platoon.

Query was one of Johnson's sergeants. Johnson admitted that Query was "outgoing," and he never had a problem with Query, but he asserted that he was "a little overzealous" at times. Query would supervise "out of fear, pretty much, . . . of being turned around and looked at as a do-nothing." Johnson talked to Query about it.

Query told him that "he was looking at Officer Vilaseca and Bysterbusch." Query told Johnson that Azambuja said "to pretty much mess with Officer Vilaseca." Azambuja had "a thing for her . . . to go after and mess with her. Anything she had done, if you felt that she deserved a CD, she should have gotten one." And true enough, Johnson noticed that Query was paying significant attention to Respondent Vilaseca. He would monitor her more than the other officers. There were rumors that other supervisors were told by Azambuja to be strict on Respondent Vilaseca as well. Johnson heard officers saying that she was being treated unfairly. They said that she was receiving a lot of tour or assignment changes, and that "she is always getting tour changes for nonsense."

When asked if it was practice in PSA 8 to carry the tactical hood to hospital posts, Johnson testified that it was "a requirement that we should have, but to be honest with you, I don't see them I don't want to say I didn't see them with it, but, you know, it's as a patrol supervisor when you are going out there, a lot of supervisors don't really think about that and pay attention to if they have all the equipment like that." In general officers would not have their tactical hood at roll call.

Johnson stated that at both PSA 8 and a prior Housing command to which he was assigned, many officers, when taking a vehicle into custody for safekeeping, would place the keys behind the desk, park the vehicle, and wait for the owner to retrieve the vehicle. It was not a common practice to voucher the car.

Johnson testified that during the argument between Respondent Bysterbusch and Encke concerning the radio, Encke yelled and became "pretty upset." Johnson did not hear or see Respondent Bysterbusch do anything wrong. He also did not hear any profane language. Johnson did not believe Respondent Bysterbusch was disrespectful. When Johnson asked Encke about the incident about a week later, she said that she was "taking care of it."

On cross examination, Johnson stated that Azambuja told him to keep a sharp eye on Respondent Vilaseca because she was lazy and did nothing on patrol. "She was a scammer, whatever that meant, in his eyes."

Respondent Bysterbusch

Respondent Bysterbusch had been assigned to PSA 8 for his entire career, since July 2003. He began working with Respondent Vilaseca on August 18, 2011, but they were not steady partners.

Prior to October 3, 2011, McKee gave Respondent Bysterbusch a notification to go to the IDCU at HQ. McKee explained that he really was going to an OEEO interview regarding a complaint in which he was a witness. On the day of the interview, Azambuja "asked" Respondent Bysterbusch to prepare prisoners for transport. Respondent Bysterbusch asked him if he was aware that he had to go to HQ that day. Azambuja told him to get the prisoners ready. Respondent Bysterbusch did so and proceeded to the ICO's office. McKee was not there.

Respondent Bysterbusch asked the assistant to call OEEO and tell them that Azambuja would not let him leave.

Respondent Bysterbusch testified that Azambuja came into the office and asked why he needed to go the IDCU. Respondent Bysterbusch said he did not know anything. Azambuja

examined Respondent Bysterbusch's ID card, noted that it was not expired, and again asked why he had to appear. Respondent Bysterbusch again feigned ignorance. Azambuja then called McKee and spoke to her. After getting off the phone, Azambuja threw a set of car keys at Respondent Bysterbusch and released him, but instructed him that he would be escorted by Query. It was Query's first day in the command and he asked Respondent Bysterbusch what was going on. During the drive, Azambuja texted Query two or three times asking where Respondent Bysterbusch was going and what he was doing. At the time of trial, Query was the Impact sergeant.

The next day, Respondent Bysterbusch spoke to Maloney about the treatment he was receiving from Azambuja and other supervisors. They discussed how Azambuja impeded him from reporting to HQ. In response, Maloney stated that he put Azambuja on the day shift so that he could be monitored. Respondent Bysterbusch told Maloney, "He's running rampant, you know. He's doing whatever he wants." Maloney said he could give Respondent Bysterbusch a shift change to the third platoon. Respondent Bysterbusch responded that he had young children and had been at the command for four years, whereas Azambuja had gotten there only six months before, so "I don't think it is fair I should have to leave." On October 5, 2011, Respondent Bysterbusch filed an EEO complaint against Azambuja, alleging that he impeded the investigation into Respondent Vilaseca's complaint.

Respondent Bysterbusch repeated his complaint to Maloney in November 2011, saying that Azambuja was "making my life miserable." Maloney made the same offer and Respondent Bysterbusch again declined.

On October 19, 2011, Respondent Bysterbusch's tour began at 0705 hours, but he overslept. He called the command and spoke to a sergeant at 0650. He gave an estimated time of arrival and eventually got there at 0815. He filled out a '28' and gave it to Query.

When Respondent Bysterbusch arrived at PSA 8 on November 9, 2011, he told the desk officer that he needed a vehicle for the CRV detail. The desk officer did not have any vehicles available but said that he would "try to get us a car." Respondent Bysterbusch testified that he was ready for the detail around 0550 hours and Respondents left at 0620.

Respondents arrived at the muster location on Canal Street in Lower Manhattan at 0700 hours. Respondent Bysterbusch contended that they always arrived at that time and the deployment to their actual location this day the Israeli consulate and mission to the United Nations generally took place between 0720 and 0740. This day, however, Caro asked, "[W]here were you?" when they arrived. At roll call, which took place at 0710, Caro said that "the deputy inspector was a little angry."

Respondents returned to PSA 8 between 1500 and 1510 hours. They gave the keys to the RMP to the police administrative aide at the desk. Azambuja was standing behind the desk and did not say anything.

Respondent Bysterbusch testified that on January 21, 2012, he had to do a 12-hour security assignment at One Police Plaza. He admitted that during the assignment, he watched a 30-second video on his phone. A sergeant approached him and said that he was going to issue Respondent Bysterbusch a CD for being inattentive while on post.

Respondent Bysterbusch received his evaluation for 2011 on February 20, 2012. In past years, he would receive it by the first or second week of January. For 2011, Respondent

Bysterbusch received a 2.0. He appealed. In previous years, he had received a 3.5 and 4.0s. He averred that his arrest activity and basic work ethic had not changed.

The appeal was not heard until June 10, 2012, by a different captain new to the command. He investigated and decided that just on the basis of the points given, Respondent Bysterbusch should have received a 3.0.

In March 2012, Respondent Bysterbusch filed a complaint with the United States Equal Employment Opportunity Commission.

Respondent Bysterbusch explained that officers were required to return their radio battery at the end of tour to the desk. The transmitter and receiver were assigned to them individually. On March 29, 2012, Respondent Bysterbusch left the transmitter and receiver at the desk at the end of tour. He spoke to some personnel then took his equipment to his locker, but the next day his transmitter and receiver were not there. At the desk, Encke told Respondent Bysterbusch that she had not seen it. He said that he would continue looking for it and borrowed a radio from a friend who was assigned to Viper. Respondent Bysterbusch told Encke that he would be using the friend's radio. They agreed that whoever found Respondent Bysterbusch's radio first should let the other know. There was no confrontation.

On April 5, 2012, Respondent Bysterbusch, in a normal tone, told Encke that they needed to do something about his lost radio. Encke told him that she thought he took care of it. She instructed him to fill out a complaint report and notify the ICO. He did so. He observed Encke, however, approach Azambuja. Azambuja grabbed her by the shirt and pulled her outside. But Respondent Bysterbusch "didn't think anything of it."

On cross examination, Respondent Bysterbusch testified that it was not his understanding that officers assigned to a hospitalized prisoner needed to have all of their patrol equipment.

Additionally, there was a policy or practice at PSA 8 where vehicles taken into custody for safekeeping were returned to their owners without being vouchered.

Respondent Bysterbusch testified that Encke told him a notification to IAB would be made about the missing radio.

Respondent Bysterbusch heard Azambuja refer to women as bitches and to African Americans as monkeys.

Respondent Vilaseca

Respondent Vilaseca had been a member of the Department since April 1997 and was assigned to PSA 8 her entire career. She was assigned to other commands at certain points while on restricted duty for medical reasons and after surgery. Around 2002, "something opened up inside" at PSA 8 and she began working in a clerical position. She remained in clerical positions until taking maternity leave around 2010. Afterward, she was assigned to patrol in PSA 8. In June 2011, Respondent was working day tours and Azambuja became her platoon commander.

Azambuja felt that the day tour "wasn't for him" and he often behaved inappropriately. He would fail to respond to assignments, even emergency jobs, involving personnel he did not like. He would talk about bananas and monkeys and "always had something to say" about African American personnel. He referred to an African American sergeant as an "Oreo." According to Respondent Vilaseca, Davis questioned Azambuja about this.

Respondent Vilaseca testified that Azambuja complained about two female officers, one black and one white, both of whom were in interracial marriages. Azambuja would say, "[W]hat is wrong with these people nowadays with these mixed marriages?" He stated that one of the officers was "mixed up in the head . . . she could have married her own."

Respondent Vilaseca testified that Azambuja had a “hit list” that included Jewish Department members. He referred to one officer with a Jewish last name as “maricon,” a term with the equivalent meaning of “faggot,” because the officer “looked weird. He acted weird, like, you know . . .” Azambuja referred to one of Respondent Vilaseca’s patrol supervisors as a pussy, stupid, and useless. He often would refer to women as bitches.

In August 2011, Azambuja was angry and cursing during roll call. He made everyone stand with their hats and equipment, something Respondent Vilaseca claimed never to have seen before. “Normally, at roll call, it is a little lax.” Afterward, Respondent Vilaseca took off her hat. While she and Azambuja passed in the hallway, he remarked, “[T]hat’s Spanish hair.” Azambuja gave her a minor violation for her hair. She claimed that she never heard of such a violation being issued.

Later that month, Respondent Vilaseca complained to Maloney about Azambuja. Maloney agreed that Azambuja needed to be closely monitored. Respondent Vilaseca suggested that an EEO complaint would be appropriate.

Respondent Vilaseca testified that a few days later, Azambuja was more irate than ever. He told the supervisors at roll call that he would deny everyone meal. He did not want supervisors to assist police officers on jobs so that the officers would not be able to “take breaks or anything.” He also began making post changes and “it became just horrific.”

Respondent Vilaseca believed that her assignments were changed in retaliation for her complaint. She never had such changes prior to the complaint.

On September 1, 2011, Respondent Vilaseca made her first complaint with OEEO. Respondent Vilaseca also filed grievances with her union concerning Azambuja and Maloney.

Respondent Vilaseca never attended COBRA training. On September 11, 2011, she was assigned to guard a hospitalized prisoner and did not stand roll call. She did not bring her tactical response hood, claiming that it was “[s]tandard procedure” in PSA 8 not to do so on fixed posts. While on the post, a supervisor came to inspect her and did not mention the absence of the hood.

On September 23, 2011, Respondent Vilaseca arrested an individual and the individual’s vehicle was taken to PSA 8. Respondent Vilaseca parked the vehicle legally on the street. Respondent Vilaseca indicated that the ADA told her the vehicle was not necessary as arrest evidence. Respondent Vilaseca informed Encke, the patrol supervisor, that the arrestee’s wife was at PSA 8 to retrieve the vehicle but she did not have a license. Respondent Vilaseca contacted the defendant’s daughter, who said that she would retrieve the car. Upon Encke’s instruction, Respondent Vilaseca gave Encke a labeled envelope with the keys inside. Respondent Vilaseca contended that because there was nowhere to store vehicles at PSA 8, “99 percent of the time” vehicles were returned to their owners.

On November 9, 2011, Torpey assigned Respondent Vilaseca to a CRV detail with Respondent Bystebusch. Respondent Vilaseca protested to Torpey that he had not given her enough time to prepare. Torpey replied that Azambuja directed him to give the assignment to Respondents.

A sergeant told Respondents that there were no vehicles available. Respondents received a vehicle about an hour later. They arrived in Lower Manhattan around 0700 hours and Caro told them that they were late. Later, while Respondent Vilaseca was on meal, Caro told her that Azambuja gave her another CRV detail for the next day. Respondent Vilaseca claimed that Caro told them “you guys must be famous or not liked” because “I have never in my 25 years . . . had

a supervisor call to notify you at a detail that you are already at a detail.” Caro did not inform Respondent Vilaseca that she would be given a CD for arriving 15 minutes late.

Around 1525 hours, Respondents returned to PSA 8 and reported to Query, the desk officer. They told Query, who was on the phone, that they returned from the detail. He acknowledged them. Respondents did not sign out because, she contended, “You don’t sign out on details.”

A few weeks prior to December 10, 2011, Respondent Vilaseca requested lost time. She was told ahead of time that she would be assigned to a foot post so that she could leave early. During roll call, Query got a phone call from Azambuja. Query said, “[D]on’t worry, boss, I will make sure . . . she does the transportation.” Around 0730 hours, Respondent Vilaseca’s assignment was changed to prisoner transport.

Respondents were assigned to transport four prisoners. Respondent Vilaseca conceded that “[n]ormally,” if there were four or more prisoners, at least three officers had to be on the transport. Respondents completed the assignment and Respondent Vilaseca returned to PSA 8 on time.

Respondent Vilaseca’s evaluation for 2010 was 4.0. For 2011, it was 2.5 so she appealed to Maloney. She asserted that Maloney told her he was not pleased with her due to her complaint.

On cross examination, Respondent Vilaseca stated that when Respondents returned to PSA 8 from the CRV detail, they entered through the front door, the only entrance into the station house. There were about 15 minutes remaining until end of tour. Respondent Vilaseca went to the bathroom, and then got her equipment, which was right next to Query. She was in front of him for about a minute. He asked if she received the notification and she said that she

did. She went to the locker room and left. She never heard her or Respondent Bysterbusch's name on the PA system.

Respondent Vilaseca denied making a reference to Query being a new sergeant during the December 2011 incident. She never told him that she was going to go end-of-tour from central booking. Davis did not have to intervene between them.

On re-direct examination, Respondent Vilaseca stated that the PA system was not working in PSA 8 during the time in question.

#### FINDINGS AND ANALYSIS

Respondents are accused of various acts of misconduct stemming from several relatively minor incidents. In general, the Department contended that Respondents were less than average officers who conducted themselves the way they wanted and ignored supervisory correction. Respondents contended that the charges stemmed from a platoon commander, Azambuja, who was difficult to work with and about whom Respondent Vilaseca made an EEO complaint. Respondent Bysterbusch was named as a witness on the complaint. Respondents asserted that the current charges were brought in retaliation for their complaints about Azambuja.

#### Retaliation Generally

The New York City Human Rights Law prohibits retaliation in response to filing an EEO complaint. It defines retaliation as an act "reasonably likely to deter a person from engaging in protected activity." See Administrative Code § 8-107 (7); Fincher v. Depository Trust & Clearing Corp., 604 F.3d 712, 723 (2d Cir. 2010); Williams v. New York City Hous. Auth., 61 A.D.3d 62, 71 (1st Dept. 2009). The protection extends to those who "filed a complaint, testified

or assisted" in a proceeding covered by the law. AC § 8-107 (7)(ii). This would cover both Respondents.

The standards used by the federal and state courts for resolving discrimination cases are useful here. To establish a prima facie case of retaliation, it must be shown that: (1) the employee engaged in a protected activity; (2) the employer was aware of the activity; (3) the employer took adverse action against the employee; (4) and a causal connection exists between the protected activity and the adverse action.

(5) If a prima facie case is established, the burden shifts to the employer to show a legitimate, non-retaliatory reason for the adverse action. See LaFond v. General Physics Servs. Corp., 50 F.3d 165, 172-73 (2d Cir. 1995); Zakrzewska v. The New School, 14 N.Y.3d 469, 479 (2010). This means that the employer must contend that its reason for the adverse action was "neutral" as to any inference of discrimination. See Massie v. Metropolitan Museum of Art, 2010 U.S. Dist. Lexis 101243, \*36 (S.D.N.Y., Aug. 17, 2010).

(6) If the employer contends that its action was motivated by a reason other than the protected activity, the burden shifts back to the employee to prove that the articulated reason was a pretext for retaliation. See DeMarco v. Holy Cross High School, 4 F.3d 166, 170 (2d Cir. 1993). The question is not whether the proffered reason is unwise or unreasonable, but whether it was the actual reason for the adverse action. DeMarco, 4 F.3d at 170-71.

(7) Even if the employer took the actions in question for reasons other than those proffered, the employee still must prove that the actions were taken out of a subjective retaliatory motive. Cf. Fincher, 604 F.3d at 720; Forrest v. Jewish Guild for the Blind, 3 N.Y.3d 295, 312-13 (2004).

(1) & (3) Protected Activity and Adverse Action

The Court takes it as established that Respondent Vilaseca engaged in protected activity when she made the EEO complaint against Azambuja, and that Respondent Bysterbusch did so when he became a witness on that complaint. It is also taken as a given that they each suffered an adverse employment action when the various CDs and minor violations that led to the current charges and specifications were issued: this was “reasonably likely to deter a person from engaging in protected activity.”

(2) Supervisory Knowledge of the Activity

Azambuja admitted that he became aware of Respondent Vilaseca’s EEO complaint in October or November of 2011. Although Respondent Vilaseca first complained about the matter to Maloney sometime in August 2011, and the ICO, McKee, would have been aware through official channels of the EEO complaint, there is no evidence that either of them informed Azambuja. Cf. Clark County School Dist. v. Breeden, 532 U.S. 268, 273 (2001) (no indication that supervisor knew about employee’s right-to-sue letter when suggesting her transfer).

The matter of Respondent Bysterbusch’s notification to be interviewed by EEO and Azambuja’s reaction to it shed light on the timing issue. Respondent Bysterbusch was given a notification on October 3, 2011, to appear at Police Headquarters to get a new ID card. But McKee took him aside and explained that he really was to appear at OEEO as a witness in an investigation. It was undisputed that Azambuja, a former ICO, was suspicious and questioned both Respondent Bysterbusch and McKee about it. This suggests that he realized an EEO complaint had been made against him and that Respondent Bysterbusch was either a complainant

or a witness. The evidence indicated that Respondent Bysterbusch worked often enough with Respondent Vilaseca that they could be seen as allies.

In any event, Azambuja said only that he became aware of the EEO complaint in October or November of 2011. Thus, any of the incidents that took place on or after October 1, 2011, should be deemed to have occurred with Azambuja's knowledge of the complaints.

#### Matters Predating Azambuja's Knowledge

##### July 27, 2011: Respondent Vilaseca: Specification No. 5: Voided Summons

Respondent Vilaseca did not dispute that she issued a summons on February 4, 2011, but failed to list a return date, resulting in the voidance of the summons. Torpey, the training sergeant, re-instructed her and issued a minor violation, as was the practice. Respondent Vilaseca claimed that she was treated harshly by getting a command discipline instead. In fact, the CD for this matter was issued because she received four minor violations within six months. A minor violation for omitting a return date on a summons is eminently fair. Therefore, Respondent Vilaseca is found Guilty.

##### September 11, 2011: Respondent Vilaseca: Specification No. 1: Lack of Escape Hood

The first specification charges that on September 11, 2001, Respondent Vilaseca failed to have her tactical response hood, or escape hood, while on patrol. She asserted at trial that she did not have to do so as a matter of practice in PSA 8 because she was assigned to guard a hospitalized prisoner. She also stated that she was not qualified in COBRA, the counterterrorism response program, and thus was not required to carry the hood.

Respondent Vilaseca's claims fail for two reasons. First, just because something happens as a practice outside the parameters of the Patrol Guide does not make it acceptable. The escape hood is part of the equipment an officer assigned to patrol must carry. The fact that Respondent Vilaseca was not assigned to an RMP or foot post does not make it less of a patrol assignment. In any event, as the Department pointed out, she could have at any time been re-assigned to anything from an RMP or foot post to a mobilization.

Furthermore, Torpey explained that the escape hood was required equipment regardless of COBRA training. The hood allowed officers to breathe long enough to flee a compromised area. In contrast, the Millennium mask was a separate, more complicated piece of equipment that functioned like a gas mask and allowed for sustained, safe breathing.

As such, Respondent Vilaseca is found Guilty of Specification No. 1.

September 23, 2011: Respondent Vilaseca: Specification No. 2: Failure to Voucher Vehicle

Respondent Vilaseca made an arrest of an individual in a vehicle on the date in question. The vehicle was not necessary as evidence of the crime. Instead of vouchering the vehicle for safekeeping, Respondent Vilaseca parked the car near the command, placed the keys in an envelope and gave them to the desk officer at the change of tours. Respondent Vilaseca did not fill out a property voucher. She claimed that she was not required to, again as a result of the practice at PSA 8. This purported practice was to simply return safekeeping vehicles to a responsible individual because there was nowhere to store them.

It is true that there is no absolute rule that every single piece of property coming into Department custody must be vouchedered. Safeguarded property may be returned to the owner. See, e.g., Case No. 86224/10 (Aug. 24, 2011) (officer could return \$20 cash to integrity-test UC

who said he had lost it in a “magic trick,” not Three-card Monte, which would mean it was a crime); *Case No. 83271/07*, pp. 20-21 (Dec. 29, 2008) (officer was allowed to return valuable watch to hospitalized prisoner after it was held by officer during radiology examination). Here, however, there was no way of telling how long the vehicle would have been sitting at the command. The arrestee’s daughter, who supposedly said that she was coming to pick up the car, apparently did not do so for two days. The proper way for Respondent Vilaseca to protect both herself and the Department was to place the vehicle on a property voucher. Cf. *Case Nos. 2011-3442 & -4085*, p. 55 (Dec. 3, 2012) (officer should have placed keys on a voucher after he summonsed individual for marijuana possession but also retained her other non-arrest property); *Case No. 2011-4684* (Jan. 5, 2012) (after arresting prisoner, officer did not voucher but instead held onto his personal belongings for four days before returning them). This would not have required any additional parking space, but would have required Respondent Vilaseca to fill out a piece of paper. She is found Guilty of failing to take this simple and required step.

October 19, 2011: Respondent Bysterbusch: Specification No. 1: Late to Work

In the first specification, Respondent Bysterbusch is charged with being approximately 1 hour and 10 minutes late for his assigned tour. He admitted that he overslept that morning and was late. He called ahead to say that he was late and filled out a ‘28’ when he got to the command. The Department did not assert that Respondent Bysterbusch failed to hand in a ‘28’ or that anything more had to be done when arriving to work late.

Respondent Bysterbusch asserted, however, that the issuance of a minor violation for this infraction was retaliatory. It occurred less than three weeks after Azambuja discerned that Respondent Bysterbusch was a witness on Respondent Vilaseca’s EEO complaint. Azambuja

made Query escort Respondent Bysterbusch to find out where he really was heading that day. In fact, Azambuja and Query knew each other from a prior command. Johnson, a former PSA 8 platoon commander who had clashed with Maloney, testified that Query told him Azambuja said he should "mess with" Respondents. Query admitted that Azambuja complained to him about Respondents prior to the date of the lateness, even though Query only had worked at PSA 8 for approximately six weeks. Encke admitted that Query told her about Respondent Vilaseca's EEO complaint.

Thus, Respondent Bysterbusch established a prima facie case: he engaged in a protected activity, Query was aware of it, Query took an adverse action, and there was a causal connection, here the short period of time. See DeCintio v. Westchester County Med. Ctr., 821 F.2d 111, 115 (2d Cir. 1987).

The next question to be answered is whether the Department can show a legitimate, non-retaliatory reason for the minor violation and whether Respondent Bysterbusch can show that it was a pretext for retaliation.

A minor violation for coming to work more than an hour late is a fair disciplinary action. It appears that Respondent Bysterbusch called ahead but that Query might not have been aware of it. Query asserted that had he been aware, he would not have issued the minor violation. In any event, Respondent Bysterbusch's lateness was a legitimate reason for the adverse action. Moreover, if Query truly wanted to retaliate, he could have initiated a CD, as reporting late for duty is a violation subject to a CD, see Patrol Guide § 206-03 (13). The fact that he took the less drastic step indicates that the actual reason for the minor violation was not retaliatory.

As such, the Court finds Respondent Bysterbusch Guilty of Specification No. 1.

November 9, 2011: Both Respondents: Specification Nos. 2-3 & 3-4, Respectively:

CRV Detail

The next set of specifications concerns both Respondents' conduct during the CRV detail. The muster location for the detail was in Lower Manhattan. They had to get there from PSA 8, which was located in Throgs Neck. Respondents asserted that a vehicle was not available when they arrived for work at PSA 8 at approximately 0530 hours. Query maintained that a vehicle was available but the Department provided no documents, such as the roll call, which would have listed RMP assignments, to shore up this critical fact. The Department was aware of the specific RMP because there was testimony about which E ZPass Respondents used.

It was undisputed that Respondents arrived at the detail after 0700 hours. Nevertheless, it also was indicated that their E-ZPass crossed over the RFK (Triborough) Bridge between 0630 and 0640.

Respondents' account of an unavailable vehicle is more credible than the Department's version. There is no evidence that they were assigned a vehicle at 0530 hours other than hearsay related by Query, allegedly from the midnight tour desk officer. The Advocate stated separately that he was not calling that sergeant as a witness because he did not remember much of anything during trial preparation. Moreover, there is no evidence that Respondents had reason or motive to delay going to the detail. Nor is there any evidence that they would have tarried after arrival at PSA 8 but then used all deliberate speed to get from East Harlem to Canal Street. Cf. *Case No. 2011-5374*, p. 43 (Aug. 22, 2013) (officer was late to CRV detail because, after muster, he stopped for coffee and bagels, resulting in over hour-and-fifteen-minute trip from Lower Manhattan to Times Square hotel). As such, Respondent Bysterbusch is found Not Guilty of Specification No. 2 and Respondent Vilaseca Not Guilty of Specification No. 3.

The next specifications charge Respondents with failing to report to Query when they returned from the CRV detail, as required pursuant to Patrol Guide § 202-21 (4). Query asserted that although Respondents returned from the detail, they never reported to him. Both Respondents agreed that they returned and were in the area of the desk.

The Patrol Guide procedure in question serves several purposes. One is to inform the desk officer of newly-available personnel for possible re-assignment. Nevertheless, the key requirement under the procedure is that the desk officer knows the officer in question is present. See *Case Nos. 74777 & -78*, p. 15 (Sept. 11, 2000). Here, Query admitted that he was aware of Respondents' return to the precinct. Respondents should not be found guilty simply because they may not have stood right in front of Query and announced their presence in a loud, clear voice. In any event, such an overly technical reading of the rule in Respondents' case would appear to be retaliatory. As such, Respondents are found Not Guilty.

December 10, 2011: Respondent Vilaseca: Specification No. 6: Argument With Query

Respondent Vilaseca is charged with courtesy concerning an interaction with Query, in which she spoke loudly and profanely toward him. It was undisputed that on the date in question, Respondent Vilaseca had lost time scheduled for the end of tour and would be leaving at approximately 1300 hours. Query was the desk officer. He testified that to oblige her, he assigned her to prisoner transport. He conceded that the vehicle had no gas and that Respondent Vilaseca had to retrieve it from PSA 8's satellite location.

Respondent Vilaseca asserted that the lost time-friendly assignment was supposed to be a foot post, which could be ended early. During roll call, however, Azambuja called Query and

spitefully directed him to change it to a time-consuming prisoner transport. She did the transport nonetheless.

Query and Davis, who apparently was preparing the prisoners for transport, contended that Respondent Vilaseca, around 1100 hours, confronted Query. She was loud, disrespectful and used profanity toward Query. She referenced Query's short tenure at PSA 8 versus hers, telling him he "just got here." Query, in response, loudly asserted his authority as a sergeant.

Although a supervisor, Davis was a relatively neutral witness and a bystander to the event. She was not an ally of Azambuja. It was Davis who, according to Respondent Vilaseca, challenged Azambuja when he referred to an African American sergeant as a "cookie," recognizing the remark's racist implications. Encke, who did ally herself with Azambuja (see Respondent Bysterbusch, Specification Nos. 5-7, infra), noted that she was not close with Davis. Davis took Respondent Vilaseca aside after the confrontation with Query to calm her down and de-escalate the situation.

Respondent Vilaseca testified at length about her treatment at PSA 8. Yet she did not deny the Department's version of the December 2011 incident except to say that it was not even an "interaction" but merely a "conversation." Although she claimed to have been okay with doing the transport, why did she mention the alleged post change at her supposed tormentor's directive and testify that there were too few personnel assigned for the transport to be done safely?

On the whole, therefore, the Department's version of events is more credible than that of Respondent Vilaseca. Moreover, there is a legitimate, non-retaliatory reason for disciplining courtesy to supervisors within the context of a paramilitary organization. See Case No. 68345/93, pp. 21-24 (Jan. 12, 1995) (it was not retaliatory for sergeant to give officer a CD for

yelling at him profanely and calling him a racist in the presence of others at station house, even though sergeant knew officer had filed EEO complaint). There is no evidence that this reasoning would be pretextual in this context. As such, Respondent is found Guilty of Specification No. 6.

March-April 2012: Respondent Bysterbusch: Specification Nos. 5-7: Argument With Encke

On March 29, 2012, Respondent Bysterbusch returned to the PSA 8 facility for end of tour. Encke was the desk officer. He left the battery pack for his radio on the desk, because that was maintained in a pool for all officers, but placed his transmitter-receiver there too while he attended to some other tasks. He returned all of his equipment to his locker, but found the next day that his transmitter and receiver were not there.

Both Encke and Respondent Bysterbusch agreed at trial that they discussed the missing radio on March 30, 2012, and it was decided that Respondent Bysterbusch would keep looking. Encke asserted that she specifically told him he had to tell her if he did not find it so that she could make the proper notifications.

About a week later, Respondent Bysterbusch asked Encke about his still-missing radio. She testified that he berated her about it in front of all the personnel that were standing by the desk. Respondent Bysterbusch said that there was no confrontation, and that Encke merely told him to file a complaint report.

Specification No. 5 charges that Respondent Bysterbusch failed to safeguard his radio on March 29, 2012. Although he denied failing to do so, it is hard to come to any other conclusion. He put it down on the desk, attended to some other tasks, picked up his equipment, and put it all in his locker. If he had safeguarded the radio, it would have gotten into his locker with his other equipment. He is therefore found Guilty of Specification No. 5.

Specification No. 6 alleges that Respondent Bysterbusch failed to look for his radio and keep Encke updated after she specifically instructed him to do so on March 30, 2012. It is undisputed that Encke did give these instructions. It is far from clear, however, even examining Encke's testimony in a light most favorable to the Department, that she directed him to report back to her within a specific amount of time. She simply told him to keep her updated, in a relatively informal way. He did so several days later. Therefore he is found Not Guilty.

The seventh specification alleges that Respondent Bysterbusch was discourteous to Encke when he informed her that he had not found his radio. Allegedly, when Encke questioned him about the alleged delay in notifying her, Respondent Bysterbusch answered "in a raised voice and reprimanding manner." It is not disputed that there was a discussion between Encke and Respondent Bysterbusch. The question is whether he was discourteous during the exchange.

Encke testified that she was so upset by the encounter that she went outside and was counseled by Azambuja. She was unsure whether she was going to issue either a minor violation or CD until she spoke to Respondent Bysterbusch about what occurred. He thought he had not been discourteous. He repeated this view at trial: they spoke about the matter but did not have a confrontation. This suggests that Azambuja might have influenced Encke's view of whether Respondent Bysterbusch was discourteous in his comments.

There were other supervisors standing near the desk when the incident occurred. Admittedly, one was Johnson, a lieutenant who did not have a positive view of Azambuja and, it might be argued by extension, Encke either. Nevertheless, Johnson was a lieutenant and it does not seem to the Court that he had any reason to protect Respondent Bysterbusch or damage Encke or Azambuja when he testified that he observed the conversation and did not find it to be

discourteous. In fact, Johnson expressed this view of Respondent Bysterbusch even after he was warned by Query that he was a problem officer.

Not every statement that can be made discourteously is discourteous in the context in which it actually was spoken. Cf. *Case No. 2010-1203*, p. 18 (Mar. 7, 2013) (telling on duty officers, “My name isn’t ‘Yo.’ Is that how you address people?” and “What are you talking about?” not rude and discourteous). Here, the Department failed to prove that Respondent Bysterbusch did anything more than remind Encke that they had spoken about the matter previously. Perhaps it was a misunderstanding but that does not make Respondent Bysterbusch’s statement discourteous. As such, he is found Not Guilty.

#### PENALTY

In order to determine an appropriate penalty, Respondents’ service records were examined. See *Matter of Peli v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Bysterbusch was appointed to the Department on July 1, 2003. Respondent Vilaseca was appointed on April 22, 1997. Information from their personnel folders that has been considered in making this penalty recommendation is contained in attached confidential memoranda.

Respondents have been found Guilty of a wide variety of misconduct. For Respondent Bysterbusch, this was arriving at work late one morning, being inattentive on a security detail when he was watching a video on his phone instead, and failing to safeguard his radio at the end of tour. For Respondent Vilaseca, it was failing to possess her escape hood, failure to voucher a vehicle, failure to place the return date on a summons, and, far more seriously, discourtesy toward a sergeant during a disagreement about her assignment.

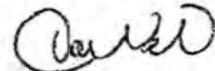
For the totality of his misconduct, the Court recommends that Respondent Bysterbusch be penalized with the loss of 20 vacation days. See Case No. 2011-4532 (Jan. 30, 2013) (20 days for failure to safeguard radio during on-duty foot pursuit, and, separately, being absent from duty for 36 minutes).

Respondent Vilaseca's case is, frankly, more serious. There was a consistent theme, a view on her part that she was going to do her job the way she saw fit, taking shortcuts when necessary, without regard to supervisory input. This culminated in telling a sergeant that she knew better than him how to conduct an assignment because she had been in the command for years and the sergeant only a few months.

It is every officer's "personal responsibility to insure that he is in compliance with not only all Patrol Guide procedures, but also with the specific requirements of his particular assignment on a given tour of duty." See Case Nos. 80214/04 et al., p. 20 (Nov. 8, 2006). Respondent Vilaseca only made the situation worse by discourteously demeaning her supervisor when he tried to correct her.

Thus, for the totality of her misconduct, the Court recommends that Respondent Vilaseca forfeit 40 vacation days as a penalty. See Case No. 83050/07 (Apr. 29, 2009) (sergeant forfeited 20 days for, inter alia, crumpling a written order that had just been given to her by a lieutenant regarding proper way to answer phone); 80214/04 et al. (25 vacation days for failures involving radio transmissions, guarding a prisoner, maintaining Activity Log and obtaining relief from post); Case No. 78287/02 (Sept. 13, 2004) (21 suspension days already served for, after becoming upset with an assignment, screaming obscenities at supervisor in presence of other members).

Respectfully submitted,



David S. Weisel  
Assistant Deputy Commissioner Trials

APPROVED  
NOV 12 2013  
RAYMOND W. KELLY  
POLICE COMMISSIONER



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER GLENN BYSTERBUSCH  
TAX REGISTRY NO. 932391  
DISCIPLINARY CASE NO. 2012-7502

In 2010 and 2012, Respondent Bysterbusch received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 4.0 "Highly Competent" in 2009. He has been awarded two medals for Excellent Police Duty. [REDACTED]

Respondent Bysterbusch has no prior formal disciplinary record.

For your consideration.

Daniel G

David S. Weisel  
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER EUNICE VILASECA  
TAX REGISTRY NO. 918428  
DISCIPLINARY CASE NO. 2012-7503

In 2012, Respondent Vilaseca received an overall rating of 3.0 “Competent” on her annual performance evaluation. She was rated 4.0 “Highly Competent” in 2007 and 2010.

[REDACTED]

For your consideration.



David S. Weisel  
Assistant Deputy Commissioner – Trials